BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA ANA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110993 ORDER DETERMINING COMPLAINT PARTIALLY SUFFICIENCY

On November 29, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Santa Ana Unified School District. On December 7, 2018, Santa Ana timely filed a Notice of Insufficiency as to Student's complaint. On December 12, 2018, OAH determined Student's complaint insufficiently plead, but allowed Student 14 days to file an amended complaint. On January 11, 2019, OAH granted Student's request for additional time and gave Student until January 25, 2019, to file an amended complaint. On January 25, 2019, Student filed an amended complaint and on February 4, 2019, Santa Ana timely filed a Notice of Insufficiency as to Student's amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges 13 claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issue One alleges Santa Ana denied Student a FAPE by failing to provide a safe environment that would allow Student to learn. Although Student does not allege any specific facts under Issue One, in reading the complaint as a whole, Student alleges he was bullied in his physical education class and mathematics class as a result of his disability. Student includes specific facts surrounding three incidents. One incident while playing flag football, one incident while playing wall ball, and one incident in mathematics class where another student pushed his desk then punched him. Issue One is sufficiently pled to put Santa Ana on notice as to the basis of Student's claim.

Issue Two alleges Santa Ana denied Student a FAPE by failing to follow procedural safeguards that would allow Student to learn. Student does not allege any facts as to what procedural safeguards Santa Ana did not follow or how the alleged failure to follow procedural safeguards denied Student a FAPE. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Three alleges Santa Ana denied Student a FAPE by unduly influencing the IEP team meeting to deny Student access to his education and ultimately push him out of school. Student does not allege when the IEP team meeting occurred or any facts regarding how Student was denied access to his education or pushed out of school. If Student wants to allege a denial of FAPE regarding the services offered, or lack thereof, Student needs to specify the date of the IEP team meeting and corresponding IEP and what services Santa Ana

failed to offer. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Four alleges Santa Ana denied Student a FAPE by violating the child find laws and failing to implement Student's Section 504 Plan. Student does not allege when Santa Ana violated child find or how it amounted to a denial of FAPE as Student alleges Santa Ana required him to work with the IEP team. If Student wants to allege a denial of child find then he needs to provide facts as to when Santa Ana should have assessed him for special education eligibility and how Santa Ana was on notice that he required an IEP. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Five alleges a denial of FAPE due to Santa Ana's failure to provide a list of low-cost or free attorneys. Student does not provide any facts as to how this failure relates to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Six alleges Santa Ana denied Student a FAPE by assessing him for "ADDHD" after Parents forbid Santa Ana from that testing. However, Student does not allege when the testing occurred, what testing was used, or how it amounted to a denial of FAPE. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Seven is unclear as to what Student is alleging. Student alleges he requested behavior support and a behavior intervention plan, however, does not allege if Santa Ana denied the request or failed to provide services Student needed. If Student wants to allege that Santa Ana failed to provide a behavior intervention plan or behavior services he needs to provide facts as to when it was requested or how Santa Ana was on notice that Student required the services. Additionally, Student needs to provide facts as to how Santa Ana failed to provide the requested services. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Eight alleges Santa Ana denied Student a FAPE by requiring Student pick an independent educational evaluator from a list of evaluators provided by Santa Ana. Student does not allege sufficient facts for Santa Ana to respond to this claim. If Student wants to allege Santa Ana denied him a FAPE by failing to fund an independent educational evaluation, then he needs to include facts regarding when he made the request for an independent educational evaluation and when and how Santa Ana responded. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Nine is an incomplete sentence. Student alleges Santa Ana denied him a FAPE in the IEP amendment in May 2018. However, Student does not allege any facts as to how Santa Ana denied him a FAPE or what was deficient in the May 2018 IEP amendment. If Student wants to allege a denial of FAPE because of the May 2018 IEP amendment, he needs

to provide facts as to what Student required that Santa Ana failed to provide. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issues 10 and 11 are not separate issues but rather factual support for Issue One. Issues 10 and 11 fail to state sufficient facts supporting the claims as separate issues, and the claims are insufficient.

Issue 12 alleges Santa Ana failed to provide Student's records to Parents at their request. However, Issue 12 does not allege when Parents requested the records, or how any alleged failure to provide records amounted to a denial of FAPE. If Student wishes to allege that Santa Ana denied him a FAPE by failing to provide Student's records and impeding Parents ability to participate in the IEP process then he needs to amend his complaint to allege when Parents requested records, what Santa Ana failed to provide, and how that impeded Parents ability to participate in the IEP process. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue 13 alleges Santa Ana denied Student a FAPE by failing to implement an addendum IEP. Student adds specific facts as to what was not implemented. Student alleges Santa Ana did not provide assistive technology until October, did not provide a note taker, did not provide a behavior intervention plan, did not provide extra time on tests, and did not provide an educational aide. Although it is unclear what IEP amendment Student is referring to, he provides sufficient facts to put Santa Ana on notice of the basis of the claim. Therefore, Issue 13 is sufficient.

Student's proposed resolutions request placement at a nonpublic school and damages. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Although an award of damages is not a remedy OAH can order, placement at a nonpublic school is a remedy available to Student. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues One and 13 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues Two, Three, Four, Five, Six, Seven, Eight, Nine, 10, 11 and 12 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and 13 in Student's complaint.

DATE: February 6, 2019

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.